IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 18176 of 2005(L)

PETITIONER:

P.P.KURIAN, MUPPATHIL HOUSE,
KUMMANAM MURI, CHENGALAM VILLAGE,
KOTTAYAM TALUK, KOTTAYAM.

BY ADV. SRI.JACOB P.ALEX.

RESPONDENTS:

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1. **MATHAI STEPHANOES,**
   NEDUMALA KIZHAKKETHIL CHARUVIL HOUSE,
   KARUVATTA MURI, PERINGANADU VILLAGE,
   ADOOR TALUK, PATHANAMTHAITTA.

2. **TUSHAR M. KARMARKAR,**
   38, MOHAMMAED MANSION, GOKHALE ROAD (SOUTH),
   DADAR, MUMBAI.

3. **DOMINIC FERNANDEZ, MHB COLONY,**
   8/581, GORAL ROAD, BORIVALI WEST, MUMBAI.

BY ADV. SRI.P.C.CHACKO (PARATHANAM).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18176/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: PLAINT IN O.S. 263/2003.

EXT.P.2: WRITTEN STATEMENT IN O.S. 263/2003.

EXT.P.3: COPY OF THE I.A. NO. 998/2005 IN O.S. 263/2003 ON THE FILES OF MUNSIFF'S COURT, ADOOR.

EXT.P.4: COPY OF THE ORDER DTD. 02/06/2005 IN I.A. NO. 998/2005 IN O.S. 263/2003.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) No.18176 OF 2005

Dated this the 2nd day of July, 2007

JUDGMENT

I have already disposed of WP(C) No.18175 of 2005, between the same parties. Ext.P4 order of the learned Munsiff dismissing an application for amendment of the written statement is under challenge.

I have heard learned counsel for the parties, Sri.Jacob P. Alex and Sri.Thomas George extensively. Sri.Thomas George would submit that the amendments which are sought to be incorporated in the written statement will cause prejudice to the plaintiff since the same will enable the writ petitioner to get away from the effect of the admissions which have been made by him in the original written statement. I cannot agree. I am of the view that baring the first amendment sought for as per Ext.P3, none of the amendments will cause any prejudice or injustice to the respondents who are the plaintiffs in the suit. The first amendment sought for in Ext.P3 is that paragraph 4 of the written statement be deleted and the paragraph suggested therein be incorporated in substitution. As far as this amendment is concerned, I am of the view that the deletion of the 4th paragraph in the written statement cannot be allowed and that the petitioner can be permitted to incorporate the proposed paragraph after the existing 4th paragraph. All

other amendments sought for under Ext.P3 were to be allowed by the learned Munsiff. However, considering the inconvenience caused in the matter of pursuing the suit and the delay which will be occasioned on account of the amendment of the written statement, the respondents are entitled for payment of cost. Accordingly, setting aside Ext.P4, it is ordered that the IA will stand allowed as prayed for except in the case of the first amendment sought for under Ext.P3. The first amendment sought for will stand allowed to the extent of permitting incorporation of the suggested para 4 along with the existing para 4 in the written statement on condition that the petitioner pays a total amount of Rs.2,000/- by way of cost. Out of the said amount Rs.1,500/- will be payable to the 1st respondent either directly or through their counsel in this court and Rs.500/- will be payable to the High Court Legal Services Committee within one month from today. If payments are not made as above, then the impugned order will stand confirmed and the Writ Petition will stand dismissed.

Since both sides want an early disposal of both the suits, there will be a direction to the learned Munsiff to expedite the trial of the suits and dispose of the same at his earliest in accordance with law.

PIUS C. KURIAKOSE, JUDGE

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